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UNCLAS SECTION 01 OF 02 PRETORIA 003930

SIPDIS

SENSITIVE

DEPT FOR AF/S M. TABLER-STONE
DEPT PLEASE PASS TO USAID/AFR
DEPT PLEASE PASS TO USTR P. COLEMAN
TREASURY FOR OASIA B. CUSHMAN
COMMERCE FOR ITA J. DIAMOND
AGRICULTURE FOR ITP

E.O. 12958: N/A

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SUBJECT: SOUTH AFRICA EXPROPRIATES FIRST FARM IN LAND

REFORM PROGRAM

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1. (SBU) Summary. The South African Government initiated expropriation procedures against the first farm as part of its land reform program, but will compensate the farmer for his property. The land restitution program seeks to restore land, which was seized by the apartheid regime, to its original black owners or their descendants. To date, the Government has restored land largely through negotiated purchases, but the farmer in this case sought 63 percent more than the independent auditor value for the land. Through this expropriation action, the South African Government is sending a signal to other farmers to play ball on land reform. The Government is also playing to its political base, which strongly supports land reform, proving that it is serious about accelerating reform. Zimbabwe-type land seizures remain highly unlikely, as the SAG is committed to market-based reform and the protection of private property. End Summary.

2. (U) The South African Government announced September 22 that it had started expropriation procedures against Leeuwspruit farm, marking the first time the government has exercised its right of eminent domain to expropriate as part of its land reform program. The 500-acre farm in North West Province, now owned by Hannes Visser, was seized by the South African government in 1942 from black farmers. The descendants of the original owners filed a restitution claim in 1997 under the Restitution of Land Rights Act of 1994. This Act allows those dispossessed of their land between 1913 and 1994 "as a result of past racially discriminatory laws or practices" to bring a restitution claim for either compensation or the return of the land. In the case of restored land, the law requires the Government to pay farmers the fair market value of land.

3. (U) In the Leeuwspruit case, the Commission on Restitution of Land Rights determined nearly three years ago that the restitution claim was valid. The Government entered into negotiations with Visser to purchase the land through a negotiated sale, but have been unable to reach agreement on the fair value. (Visser continues to dispute the validity of the claim itself, but was willing to negotiate for the transfer.) Visser claimed that the improved portion of the land was worth Rand 3 million (approximately USD 500,000), while independent auditors valued it at Rand 1.75 million (approximately USD 300,000). As a "last resort," and consistent with the Restitution Act and South African Constitution, the Government announced September 22 that it was expropriating Visser's farm and paying him the independent auditor value. Visser has the right to appeal the decision to the Minister of Agriculture and Land Affairs, and then the courts.

4. (U) The major farmer's union in South Africa, AgriSA, suggested that the Government was making an example of Visser. They argued that the Government had not exhausted all avenues before the expropriation. The opposition Democratic Alliance emphasized that the value of the compensation was the critical factor; the state had the burden of proving that the compensation offered was fair and market-related.

5. (SBU) While Visser has challenged the independent auditor's valuation, Government and several land NGOs have argued that commercial farmers often inflate the value of claimed land in a bid to take advantage of -- or slow down -- the land reform program. Marc Wegerif of Nkuzi Development Association, a land reform organization, told PolOff September 23 that he believes that the independent auditor prices are often tilted in the farmers' favor; the (largely white) auditors have long-standing relationships with the (largely white) commercial farms, so they err on the side of over-valuing farms slated for restitution or redistribution.

16. (SBU) COMMENT: By pursuing the expropriation claim, the South African Government sending a signal to white farmers to play ball on land reform. Land remains an emotional, political issue in South Africa, and the Government needs to show progress. The transfer of land from the white farmers to blacks is moving slowly. While many South Africans are impatient with the pace of reform, we believe that Zimbabwe-like land seizures remain highly unlikely. The Constitution and legal framework protect property rights, and the Government is committed to reform through market-based transactions. END COMMENT.

Background on Land Reform

17. (U) South Africa's land reform program has three planks: restitution, redistribution, and tenure reform. Each is summarized below:

-- Restitution: Significant progress has been made on restoring land to those who filed claims under the Restitution of Land Rights Act. Of the 79,693 claims lodged before December 31, 1998 (the cut-off date for such claims), 80 percent have been settled. Most of the settled claims were in urban areas (e.g., District Six and Sophiatown). The more difficult rural cases (like the Leeuwspruit farm) have not yet been settled. Most of the remaining rural claims are in Limpopo, Mpumalanga, and KwaZulu-Natal. The Government wants to settle all restitution claims by 2008.

-- Redistribution: At the end of apartheid in 1994, white farmers held 87 percent of the commercial farm land. The Government committed to transferring 30 percent of the land to black farmers by 2014, but has succeeded in redistributing only 4.2 percent by the end of 2004. The Government supports redistribution through grants and other mechanisms to encourage black farmers to purchase land on the market. Some have criticized the "willing seller/willing buyer" process as slow and ineffective.

-- Land Tenure Reform: Parliament passed the Communal Land Rights Act (CLRA) in 2004 to provide increased tenure security to those living on traditional, tribal, or community land. Most of this land is in the former "homelands," where 30 percent of the population live and poverty is most serious. Implementation of CLRA is a politically-sensitive issue because it challenges the power of local traditional leaders, and is only now beginning.

TEITELBAUM